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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,952	11/13/2003	Leon LaHay	221P6US	6709
20577	7590	02/08/2006	EXAMINER	
LONG AND CAMERON SUITE 1401 - 1166 ALBERNI STREET VANCOUVER, BC V6E 3Z3 CANADA			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/705,952	LAHAY, LEON	
	Examiner Khoa D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 28 November 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 12-32 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 12-32 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Specification*

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a connection anchoring as recited in claim 14.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15 and 16 recite the limitation "said connection". There is insufficient antecedent basis for this limitation in the claims.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 12-14, 17-19, 22-24 and 26-32, are rejected under 35 U.S.C. 102(b) as being anticipated by Fettes (5950252).

Regarding claim 12, the Fettes reference discloses a spa cover lifting mechanism (Fig. 15) in combination with a spa cover (16) and a spa housing

(10). The mechanism includes a pair of lifting arms (at 22). The lifting arms have first ends (about 29) pivotally mounted at opposite sides of the spa cover and opposition second ends (about 66). The mechanism also includes a pair of lifting arm supports (25). Pivotal connections (97) between the lifting arms supports allow pivotation of the lifting arms between raise and lowered positions. A spa cover engagement structure(s) (Fig. 3) arrange at said opposite second ends for lifting engagement with the spa cover (16). Spring means (32) connects to the first ends (via elements 38 & 25) of the lifting arms and biasing the lifting arms, wherein the spring means (32) assists the pivotal movement to raise the spa cover engagement structures and therewith the spa cover. A spring enclosure (constitute by panel 208 viewing from inside the page out or inside the tub looking out) partially encloses the spring means from the user's view.

Regarding claim 13, the mechanism also includes means for longitudinally (38) adjusting the position and tension of the spring means (32).

Regarding claim 14, each of the spring means (32) includes a first spring end (the hooking portion adjacent element 38), a link (47) connecting the first spring end to the first end of the respective lifting arms, a second spring end (30) and a connection anchoring (at 214) anchoring the second spring end.

Regarding claim 17, the mechanism also includes means for securing (bolts 48 and element 206) the spring enclosure (constitute by panel 208 viewing from inside the page out or inside the tub looking out) to opposite sides of the

spa housing and pivotal connections between the first ends of the lifting arms and respective ones of the spring enclosures.

Regarding claim 18, the Fettes reference discloses a spa cover lifting mechanism (Fig. 15). The mechanism includes a pair of lifting arms (at 22), a pair of lifting arm supports (25). Pivotal connections (97,48) between the supports and the lifting arms, a pair of tension spring (32) connects to respective ones of the lifting arms, a pair of elongate housing (constitute by panel 208 viewing from inside the page out or inside the tub looking out) extending at an angle to the lifting arms and containing the springs so as to block the springs from the user's view.

Regarding claim 19, the mechanism also includes connections (about 38, 47, 30, 214) between the tension springs and the housings, wherein the connections are being adjustable longitudinally of the housings.

Regarding claim 22, the elongated housings have ends (about 214). The supports (25) are secured to the ends of the housings (via elements 38, 47, 32, 30) and the pivotal connections (97,48) are proximate to and spaced from respective ends of the lifting arms.

Regarding claim 23, the Fettes reference discloses a spa cover lifting mechanism (Fig. 15). The mechanism includes a pair of lifting arms (at 22). The lifting arms have first ends (about 29) pivotally mounted at opposite sides of the spa cover and opposition second ends (about 66). The mechanism also includes a pair of lifting arm supports (25), a pair of pivotal connections (97,48) between

the lifting arms and the supports, a spa cover engagement structure(s) (Fig. 3) arrange at said opposite second ends for lifting engagement with the spa cover (16). A pair of springs (32) biases the lifting arms, wherein the springs (32) assist the pivotal movement to raise the spa cover engagement structures and therewith the spa cover. A spring housing (constitute by panel 208 viewing from inside the page out or inside the tub looking out) partially encloses the spring means from the user's view.

Regarding claim 24, the mechanism also includes links (38,47) connecting the springs to the lifting arms.

Regarding claim 26, the lifting arm supports (25) are provided (through the connection 97) on the spring housings.

Regarding claim 27, the mechanism also includes connections (about 38, 47, 30, 214) between the tension springs and the housings, wherein the connections are being adjustable longitudinally of the housings.

Regarding claim 28, the Fettes reference discloses a spa cover lifting mechanism (Fig. 15). The mechanism includes a pair of lifting arms (at 22). The lifting arms have first ends (about 29) pivotally mounted at opposite sides of the spa cover and opposition second ends (about 66). The mechanism also includes a pair of springs (32) each extending at an angle, connections (47) between the tension springs and the first ends of the lifting arms, a spa cover engagement structure(s) (Fig. 3) arrange at said opposite second ends for lifting engagement

with the spa cover (16), a pair of lifting arm supports (25), a pair of pivotal connections (97,48) between the lifting arms and the supports.

Regarding claim 29, a pair of spring housings (constitute by panels 208 viewing from inside the page out or inside the tub looking out) partially encloses the spring means from the user's view.

Regarding claim 30, as schematically shown in Figs. 15 & 16, the lifting arms are pivotable about the pivotal connections between raised and lowered positions and the housings each have an open end (the opening portion of element 208 near element 29), said springs being connected to the lifting arms through the open ends and the first ends of the lifting arms covering the open ends of the housings on pivotation of said lifting arms into said raised positions (Fig. 15).

Regarding claim 31, each of the tension springs has a spring tension adjuster (38).

Regarding claim 32, the lifting arm supports (25) are provided (through the connection 97) on the spring housings.

6. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry (4853985).

The Perry reference discloses a spa cover lifting mechanism in combination with a spa cover and a spa housing (Fig. 2). The mechanism includes a pair of lifting arms (at 46). The lifting arms have first ends (about 64) pivotally mounted at opposite sides of the spa cover and opposition second ends

(about 56). The mechanism also includes a pair of lifting arm supports (86). Pivotal connections (64,84) between the lifting arms supports allow pivotatation of the lifting arms between raise and lowered positions. A spa cover engagement structure (42) arrange at said opposite second ends for lifting engagement with the spa cover (14). Spring means (18) connects to the first ends (via elements 78,80,88) of the lifting arms and biasing the lifting arms, wherein the spring means (18) assists the pivotal movement to raise the spa cover engagement structures and therewith the spa cover. A spring enclosure (85) encloses the spring means from the user's view.

Regarding claim 13, the Perry reference also discloses means for longitudinally adjusting the position and tension of the spring means (col. 8, lines 55-59).

7. Claims 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Seyler (4776626).

Regarding claim 18, the Seyler reference discloses a cover lifting mechanism (Fig. 1). The mechanism includes a pair of lifting arms (at 16), a pair of lifting arm supports (constitute by the end portion of element 24 which has hole for receiving bolt 29 as shown in Figure 4). Pivotal connections (29) between the supports and the lifting arms, a pair of tension spring (15) connects to respective ones of the lifting arms, a pair of elongate housing (14) extending at an angle to the lifting arms and containing the tension springs (15).

All functional implication and statement of intended use have been fully considered. They, however, are deemed not to impose any structural limitation distinguishable over the Seyler device which is capable of being used as a spa cover lifting mechanism.

Regarding claims 19-21, the mechanism also includes connections (Fig. 3) between the tension springs and the housings, wherein the connections are being adjustable longitudinally of the housings. Each of the connections includes a threaded adjustment member (at 31), wherein the threaded adjustment member is anchored in an end closure (about 33) of the housing remote from the lifting arm.

8. Claims 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke (2641019).

Regarding claim 23, the Burke reference discloses a cover lifting mechanism (Fig. 5). The mechanism includes a pair of lifting arms (at 16) each having a first end (constituted by the portion adjacent element 18) and a second end (constituted by the portion opposite the first end), a pair of lifting arm supports (18), a pair of pivotal connections (24) between the lifting arms and the supports, a cover engagement structure (22,23) arranged at the second end for lifting engagement with the cover (2). A pair of springs (33) biases the lifting arms, wherein the springs (33) assist the pivotal movement to raise the cover engagement structures and therewith the cover. Spring housings (35) enclose the springs.

All functional implication and statement of intended use have been fully considered. They, however, are deemed not to impose any structural limitation distinguishable over the Burke device which is capable of being used as a spa cover lifting mechanism.

Regarding claim 24, the mechanism also includes links (Fig. 5) connecting the springs to the lifting arms.

Regarding claim 25, the lifting arms have slots and said links (25) extending from the housings through the slots into the lifting arms.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry (as discussed *supra*).

Regarding claim 14, each of the spring means (18) includes a first spring end (the hooking portion adjacent element 78), a link (76) connecting the first spring end to the first end of the respective lifting arms, a second spring end (the hooking portion adjacent element 74) and a connection anchoring (74) anchoring the second spring end.

Regarding claims 15 and 16, the Perry reference DIFFERS in that it does not specifically disclose that the connection is adjustable as claimed. However,

the Perry reference does disclose that the position and tension of the spring could be adjustable by changing the connecting location of the springs (col. 8, lines 56-58). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made recognize that the Perry tension springs are obviously capable of being longitudinally adjustable to vary the position and tension of the springs.

***Response to Amendment***

11. Applicant's amendment, filed on 11/28/05, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

***Response to Arguments***

12. Applicant's arguments filed on 11/28/05 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that the Wall et al. reference does not teach the limitation of a spring that biases the lifting arm, thereby assisting in the raising of the spa cover as recited in the new claims. See Remarks section, pages 10-13.

Nevertheless, such assertions are now moot in view of the new grounds of rejections under 35 U.S.C. 102(b) as being anticipated by Fettes (5950252); under 35 U.S.C. 102(b) as being anticipated by Perry (4853985); under 35 U.S.C. 102(b) as being anticipated by Seyler (4776626); under 35 U.S.C. 102(b) as being anticipated by Burke (2641019); and under 35 U.S.C. 103(a) as being unpatentable over Perry as discussed above.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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02/05/2006